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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,566	01/16/2004	Jeffrey Louis Viola		5926

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EXAMINER

NEWTON, JARED W

ART UNIT PAPER NUMBER

3634

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,566	Applicant(s) VIOLA, JEFFREY LOUIS	
	Examiner Jared W. Newton	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This non-final rejection is in reply to the remarks filed January 9, 2005, by which claims 1 and 2 were amended, and claim 3 was cancelled.

Claim Objections

Claims 1 and 2 are objected to because the following recitations render the claims indefinite:

- “said upswept surface may have a slot” (Claim 1, Ln. 17)
- “the bottom side 18 may be recessed” (Claim 2, Ln. 2-3)

In particular, the use of the term “may” does not definitively set forth whether or not the apparatus at hand comprises a slot or hole (Claim 1), or whether or not the bottom side of said apparatus is recessed or cored (Claim 2). One would not know whether the invention of the present application would infringe on another invention, because the present invention is not clearly defined.

Claim 1 is further objected to because it does not comply with the proper sentence structure required by MPEP 608.01(m) [R-3]. “Each claim begins with a capital letter and ends with a period. Periods may not be used elsewhere in the claims except for abbreviations.” See *Fressola v. Manbeck*, 36 USPQ2d 1211 (D.D.C. 1995).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by US Patent No. 5,250,000 to Boutin et al.

See FIG. 3. Boutin et al. disclose a support member 20 comprising a generally flat and smooth remote control attachment surface having a section along the long axis capable of mounting various articles such as surface 18; said member devoid of raised features or indentations; said surface defined by two generally parallel sides, a perpendicular side, and an opposite connected perpendicular surface 42 protruding some distance creating a new surface defined at an angle into a new place to form an upswept portion; said new surface having a slot or groove 33 used as a handle (see Col. 3, Ln. 21); said member further comprising “strips of hook and loop demateable attachment means 38 which are matable with corresponding attachment means 40 on the back surface of play surface 18” (see Col. 3, Ln. 47-50).

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by US Patent No. 5,872,702 to Kopel.

In regard to claim 1, Kopel discloses a remote control holder comprising a generally flat surface defining a mounting surface 14 defined by two generally parallel sides 11, a perpendicular side 12 and a curved portion 13 opposite of said

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perpendicular side (see FIG. 2). Kopel further discloses an upswept handle portion 20 that extending through a plane from said curved portion 13 at an angle (see FIG. 1).

Kopel further discloses connective strips 40 used to attach said remote control units to said mounting surface (see FIG. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Boutin et al. as applied to claim 1 above, and further in view of US Patent No. 6,010,005 to Reames et al.

Boutin et al disclose a support comprising all of the limitations of claim 1, and further disclose a recessed bottom section of said support (defined between the lower portions of ends 42 (see FIG. 3)). Boutin et al. do not disclose the use of injection molding.

Reames et al. disclose a serving tray formed of injection molded plastic material (see Abstract, Ln. 3-4). The Boutin et al. and Reames et al. references are analogous art because they are from the same field of endeavor—planar support surfaces. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the support as disclosed by Boutin et al. from injection molded plastic, as disclosed by Reames et al. The motivation would have been to provide a strong and lightweight

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support. Boutin et al. disclose the desirability of a strong and easily mobile support.

Injection molding provides a well-known and successful solution to this need.

Response to Arguments

Applicant's arguments filed January 9, 2006 have been fully considered. The amendments to the claims include the incorporation of new subject matter that has not been considered on the merits. In particular, Applicant has incorporated subject matter into the claims that was not in the original disclosure. Although the original specification does not include raised bumps or indentations, it also does not disclose reasons as to why including said bumps or indentations would be detrimental to the storage of remote control units. The raised surfaces on the invention to Gibson are intended to help maintain an object on the surface. It is reasonable to conclude that the same bumps, although not intended to retain remote control units on the surface, would do just that. Continued incorporation of subject matter not defined or explained in the original specification is improper as its purpose would solely be to enable Applicant to overcome any given reference.

The rejections based on Gibson and Schultz have been withdrawn in view of the fact that it would not have been obvious to one of ordinary skill in the art at the time of the invention to include adhesive strips or hook-and-loop fasteners on the apparatus as set forth by Gibson.

The Kopel reference has been maintained. Although the upper portion of the holder is not explicitly defined as a handle, said portion is reasonably capable of being

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used as a handle. Moreover, wherein a handle is defined as "a part that is designed to be held," it is explicitly shown in the Kopel reference that said upper portion is indeed a handle, because it is held by a chair arm. Further, the Kopel reference shows an upswept portion extending at some initial angle into a plane. The fact that the portion is curved does not diminish from the fact that the portion extends at some initial angle into, albeit partially, a plane. The Kopel reference does not show a slot or hole; however, the recitation of the claim stating that the present invention *may* have said slot or hole leaves open the possibility that the invention *may not* have said slot or hole.

The Boutin et al. reference as set forth clearly discloses all of the limitations of claim 1. The connective means are well capable of receiving any device having mating connective means, including remote control units.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US Patent No. Des. 472,767 to Gebhardt et al.
- US Patent No. 5,647, 486 to Wilen

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JWN
February 9, 2006



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